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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,583

12/03/2003

Eric McConnell

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EXAMINER

NELSON, FREDA ANN

ART UNIT

PAPER NUMBER

3628

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,583	<b>Applicant(s)</b> MCCONNELL ET AL.	
	<b>Examiner</b> Freda A. Nelson	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on December 3, 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

This is in response to a letter for a patent filed December 3, 2003 in which claims 1-21 were presented for examination. Claims 1-21 are pending.

#### **Information Disclosure Statement**

The information disclosure statement (IDS) submitted on 05/11/04 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. A copy of PTO-1449 is attached.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claims 1-10, the claim language is directed to a system, however, it appears that the applicant is claiming method.

As per claims 11-20, the claim language is directed to a computer-readable medium, however, it appears that the applicant is claiming method

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

**1. Claims 1-20 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.**

35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added). Applicant's claims mentioned above are intended to embrace or overlap two different statutory classes of invention as set forth in 35 USC 101. The claims begin by discussing a system (ex. preamble of claim 1), the body of the claim discusses the specifics of the computer system, and subsequently the claim then deals with the specifics of a method (the steps) executed by the system (see above rejection of claims under 35 USC 112, second paragraph, for specific details regarding this issue). "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or

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(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**2. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Alfred et al. (US PG pub. 2003/0187808).**

As per claims 1 and 11, Alfred et al. disclose a computer system,  
comprising:

a processor (FIG. 1) ; and

a memory for storing computer readable instructions that, when executed by said processor, cause the computer to perform the steps of (FIG 1) :  
receiving a set of data corresponding to a set of predetermined variables  
(paragraph [0014]);

determining a total cost estimate of one or more products using the set of data corresponding to the set of predetermined variables (paragraph [0015]);

determining a difference in cost, and generating a cost differential report according to the estimated total cost for each product (paragraph [0016]); and

displaying the report (paragraph [0016]).

As per claim 2 and 12, Alfred et al. disclose the computer system of claim 1, wherein the step of receiving a set of data corresponding to a set of predetermined variables further comprises:  
receiving the set of data from the user through portions of a user interface configurable for user input (paragraph [0017]).

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As per claims 3-6 and 13-16, Alfred et al. does not disclose, wherein the step of determining a total cost estimate of one or more products using the set of data corresponding to the set of predetermined variables further comprises:

- determining a total material cost for one or more products;

- determining a total hidden cost value for one or more products.

- determining the percentage cost differential between each pair of products; and

- determining the difference in total cost between each pair of products,

however claims directed to a apparatus/system must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 1 including a processor and a memory for displaying the report are disclosed in Alfred et al. as described herein. Alfred et al discloses a processor (FIG. 1) and a memory (FIG. 1). Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

As per claims 7-10 and 17-20, Alfred et al. does not disclose wherein the step of displaying the report further comprises:

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generating a graphical representation of costs and savings for each product;

generating a textual or numerical summary or report detailing cost differentials for each product;

prompting the user with an option to purchase the product; and

displaying sales information, however claims directed to a apparatus/system must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 1 including a processor and a memory for displaying the report are disclosed in Alfred et al. as described herein. Alfred et al discloses a processor (FIG. 1) and a memory (FIG. 1). Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

As per claim 21, Alfred et al. disclose a graphical user interface for a computer system, comprising:

a first display portion configured to accept user input relating to a bulk material product and a corresponding monetary value (Fig. 7);

a second display portion configured to accept user input relating to other

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cost data associated with the material product (Fig. 7); and

a third display portion configured to display graphical objects associated with generating a cost differential report associated with the material product and another predetermined bulk product (Fig. 8).

### ***Conclusion***

3. The examiner has cited prior art of interest, for example:

1) Spiegelhoff et al. (US Patent Number 5,742,931), which disclose a system and method for allocating resources of a retailer among multiple wholesalers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday, 9:00am -5:30pm.

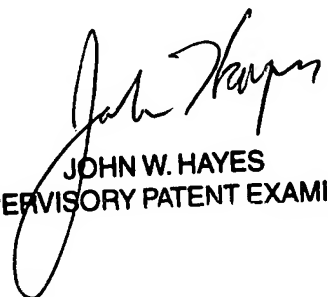
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 04/29/2007



JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER